

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

In the Matter of	)	
	)	Order No.: <u>SF-04-003</u>
	)	
<b>DAVIDSON TRUST CO.,</b>	)	Date: <u>April 26, 2004</u>
<b>Great Falls, Montana.</b>	)	
	)	
OTS Docket No.: 16693	)	
	)	

**CONSENT ORDER TO CEASE AND**  
**DESIST AND FOR AFFIRMATIVE RELIEF**

**WHEREAS**, DAVIDSON TRUST CO., Great Falls, Montana, OTS Docket No 16693 (DAVIDSON TRUST or Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist and for Affirmative Relief (Stipulation); and

**WHEREAS**, DAVIDSON TRUST, in the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist and for Affirmative Relief (Order) pursuant to 12 U.S.C. § 1818(b).<sup>1</sup>

**WHEREAS**, the Director of the Office of Thrift Supervision (OTS) has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where the Association has consented to the issuance of the Order.

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<sup>1</sup> All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

**NOW THEREFORE, IT IS ORDERED THAT** DAVIDSON TRUST, its directors, officers, employees, or agents shall cease and desist from assisting or participating in any manner in any of the following activities or practices:

1. Late Trading (as defined in paragraph 3 of the Order) in connection with trades of mutual fund shares;
2. Market Timing (as defined in paragraph 3 of the Order) in connection with trades of mutual fund shares where DAVIDSON TRUST, its directors, officers, employees, or agents know or have reason to know that a client has engaged or intends to engage in Market Timing; or
3. Any other activity or activities that knowingly facilitates a client's Late Trading or Market Timing.

**IT IS FURTHER ORDERED THAT:**

Within 30 days from the effective date of this Order, DAVIDSON TRUST shall provide the OTS with a plan for its review and written approval reasonably to ensure DAVIDSON TRUST's compliance with all applicable requirements for security transactions, including, but not limited to the Recordkeeping and Confirmation for Securities Transactions requirements set forth in Part 551 of the OTS regulations, 12 C.F.R. 551 et seq. (Plan). Upon OTS approval, the Plan shall become part of and incorporated into this Order and DAVIDSON TRUST shall be required to comply with the Plan.

**BOARD OF DIRECTORS**

1. **Director Responsibility.** Notwithstanding the requirements of this Order that the Board submit a Plan to the Regional Director or his designee for the purpose of receiving his approval, such regulatory oversight does not derogate or supplant each individual member's

continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of DAVIDSON TRUST at all times.

**2. Compliance with Order.**

A. The Board and officers of DAVIDSON TRUST shall take immediate action to cause DAVIDSON TRUST to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause DAVIDSON TRUST to continue to carry out the provisions of this Order.

B. The Board, on a quarterly basis, shall adopt a resolution of the Board (the Compliance Resolution) formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar quarter, DAVIDSON TRUST has complied with each provision of this Order currently in effect. The Compliance Resolution shall specify in detail how, if at all, non-compliance was found to exist.

C. The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such director's reasoning for opposing or abstaining.

D. No later than the seventh calendar day of the month following the end of a quarter, beginning with the end of the first quarter following the Effective Date, DAVIDSON TRUST shall provide to the Regional Director a certified true copy of the Compliance Resolution(s) adopted at the Board meeting. The Board, by virtue of DAVIDSON TRUST'S submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be

deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of DAVIDSON TRUST.

E. The Board shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

### **MISCELLANEOUS**

#### **3. Definitions.**

A. "Late Trading" refers to the practice of permitting a purchase or redemption order received after the calculation of that day's net asset value (NAV), typically 4:00 p.m., Eastern Time, to receive that day's NAV share price.

B. "Market Timing" refers to the practice of buying and selling mutual fund shares over the short term to exploit potential pricing inefficiencies in a manner that was contrary to the stated policies of the individual mutual funds as set forth in their respective prospectuses.

C. All other technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations (C.F.R.), Home Owners' Loan Act (HOLA), Federal Deposit Insurance Act (FDIA), or OTS Memoranda. Any such technical words or terms used in this Order and undefined in said C.F.R., HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

10. **No Violations Authorized; OTS Not Restricted.** Nothing in this Order or the Stipulation shall be construed as: (i) allowing DAVIDSON TRUST to violate any law, rule, regulation, or policy statement to which it is subject, or (ii) restricting or estopping the OTS from taking any other action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

11. **Incorporation.** The Stipulation is made a part hereof and is incorporated herein by this reference.

OFFICE OF THRIFT SUPERVISION

By: \_\_\_\_\_

*Edwin L. Chow*  
Edwin L. Chow  
Acting Regional Director  
West Region

(Davidson Trust CD Order3 c:\davidson trust)

DAVIDSON TRUST CO.  
ORDER TO C&D/AFFIRM RELIEF

4. **Successor Statutes, Regulations, Guidance, Amendments.** Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

5. **Effective Date.** This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative. DAVIDSON TRUST has the right to request termination, modification, or suspension of the Order.

6. **Notices.** Any notice, report or request for supervisory approval required to be made to the OTS by this Order shall be provided in writing to:

Regional Director  
Office of Thrift Supervision  
Department of the Treasury  
2001 Junipero Serra Boulevard, Suite 650  
Daly City, California 94014  
Fax: (650) 746-7001

7. **Time Limits.** Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted.

8. **Effect of Headings.** The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.

9. **Separability Clause.** In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his sole discretion determines otherwise.

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

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In the Matter of )

**DAVIDSON TRUST CO.,** )  
**Great Falls, Montana.** )

OTS Docket No.: 16693 )  
\_\_\_\_\_ )

Order No.: SF-04-003

Date: April 26, 2004

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN**  
**ORDER TO CEASE AND DESIST AND FOR AFFIRMATIVE RELIEF**

**WHEREAS**, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against DAVIDSON TRUST CO., Great Falls, Montana, OTS Docket No. 16693 (DAVIDSON TRUST), pursuant to 12 U.S.C. § 1818(b),<sup>1</sup> and

**WHEREAS**, DAVIDSON TRUST desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding, and

**WHEREAS**, DAVIDSON TRUST enters into this Stipulation and Consent without any adjudication on the merits, without admitting or denying that such grounds exist to initiate an administrative cease and desist proceeding, without admitting or denying the Findings of Fact, except as to Jurisdiction per paragraph 1 below, which jurisdiction is admitted, and solely for the

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<sup>1</sup> All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions,

**NOW, THEREFORE,** on these premises, DAVIDSON TRUST hereby stipulates and agrees as follows:

**1. Jurisdiction.**

(a) DAVIDSON TRUST is a "savings association" within the meaning of 12 U.S.C. § 1813(b), and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative cease and desist proceeding against such a savings association. Therefore, DAVIDSON TRUST is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the West Region of the OTS or his/her designee (Regional Director) the authority to issue cease and desist orders where the institution has consented to the issuance of the orders.

**2. OTS Findings of Fact.** The OTS finds that DAVIDSON TRUST:

(a) Allowed a custodial account to engage in "Late Trading" of mutual fund shares in contravention of the requirements of applicable forward pricing regulations. Such trading ended at the direction of DAVIDSON TRUST in January 2003. Late Trading refers to the practice of permitting a purchase or redemption order received after the calculation of that day's net asset value (NAV), typically 4:00 p.m. Eastern Time, to receive that day's NAV share price;

(b) Allowed a custodial account to engage in "Market Timing" activities relating to mutual fund shares traded through DAVIDSON TRUST. Market Timing refers to the practice of



buying and selling mutual fund shares over the short term to exploit potential pricing inefficiencies in a manner that is contrary to the stated policies of the individual mutual funds as set forth in their respective prospectuses; and

(c) Failed to put in place adequate policies and procedures and systems reasonably designed to ensure DAVIDSON TRUST's compliance with all applicable requirements for securities transactions, including, but not limited to, the Record Keeping and Confirmation Requirements for Security Transactions set forth in Part 551 of the OTS Rules and Regulations, 12 C.F.R. § 551 et seq.

As a consequence, DAVIDSON TRUST failed to prevent violations of laws, rules and regulations.

3. **Consent.** DAVIDSON TRUST consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist and for Affirmative Relief (Order). It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. **Finality.** The Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or his/her designee for the West Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers.** DAVIDSON TRUST waives the following:

(a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);

(b) the right to an administrative hearing of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and

(e) the right to assert this proceeding, its consent to the issuance of the Order or the issuance of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. **Other Governmental Actions Not Affected.** DAVIDSON TRUST acknowledges and agrees that the consent to the issuance of the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against or any other proceeding that may be or has been brought by the OTS or another governmental entity.

7. **Reservation of Rights.** DAVIDSON TRUST acknowledges that OTS reserves the right to bring such additional action(s), charge(s), or proceeding(s) arising from or related in any way to the Findings of Fact or any other matter, as the OTS deems appropriate, in its sole discretion.

8. **Miscellaneous.**

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the construction hereof; and

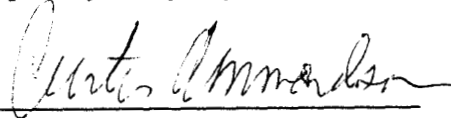
(d) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

9. **Signature of Directors.** Each Director signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation.

**WHEREFORE**, DAVIDSON TRUST CO., by a majority of its directors, executes this Stipulation and Consent to the issuance of an Order to Cease and Desist and for Affirmative Relief, intending to be legally bound hereby.

**DAVIDSON TRUST CO.**

Accepted by a majority of its directors:

By:   
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**OFFICE OF THRIFT SUPERVISION**

\_\_\_\_\_  
Edwin L. Chow  
Acting Regional Director, West Region

Dated: \_\_\_\_\_

(Davidson Trust CD Stip3 c:\davidson trust)

DAVIDSON TRUST CO.  
STIP TO C&D/AFFIRM RELIEF

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**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_

Director

*Arthur W. Bueck*  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Edwin L. Chow

Acting Regional Director, West Region

Dated: \_\_\_\_\_

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
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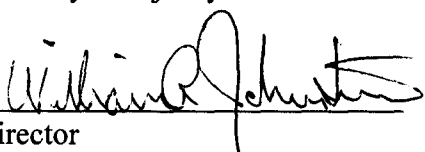
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Director

**OFFICE OF THRIFT SUPERVISION**

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Edwin L. Chow  
Acting Regional Director, West Region

Dated: \_\_\_\_\_

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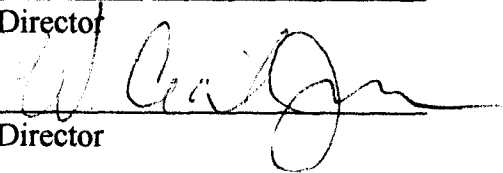
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By: \_\_\_\_\_  
Director

\_\_\_\_\_  
Edwin L. Chow  
Acting Regional Director, West Region

\_\_\_\_\_  
Director

Dated: \_\_\_\_\_

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Director  
  
\_\_\_\_\_  
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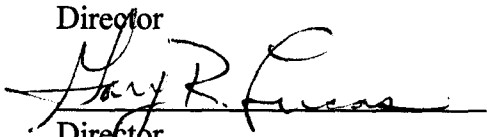
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Director

\_\_\_\_\_  
Edwin L. Chow  
Acting Regional Director, West Region

\_\_\_\_\_  
Director

Dated: \_\_\_\_\_

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Director

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Director  
  
Director

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DAVIDSON TRUST CO.  
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**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_  
Director

*Edwin L. Chow*

Edwin L. Chow  
Acting Regional Director, West Region

\_\_\_\_\_  
Director

Dated: 4/26/04

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Director

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Director

\_\_\_\_\_  
Director

*[Signature]*  
Director

(Davidson Trust CD Stip3 c:\davidson trust)

DAVIDSON TRUST CO.